

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant, who is 40 years old, served in the military as an enlisted member and officer. He was charged in a nonjudicial punishment proceeding with adultery and other offenses. He was administratively separated with a general discharge under honorable conditions. Since approximately 2010, he has worked for Federal contractors in different countries. In 2012 and 2013, he worked in Kyrgyzstan. He currently works in a Middle Eastern country.

In 2014, Applicant married for the third time. His wife was born in Russia and is a citizen and resident of Kyrgyzstan. She moved to Kyrgyzstan as a child, but has relatives in Russia. Applicant has a 10-year-old stepson who is a citizen and resident of Kyrgyzstan. Applicant believes that all parental rights between the natural father and his stepson have been terminated. Applicant and his wife also have a three-year-old son who is a citizen of the United States, but resides with his mother in Kyrgyzstan.

Applicant's wife works in a factory in Kyrgyzstan. He provides her regular financial support. He sees her twice a year for two or three weeks. His wife's mother is a citizen and resident of Kyrgyzstan. She does not work for the government. Neither he nor his wife provide her mother any support. His wife and her mother have regular contact.

Applicant has applied for U.S. immigration visas for his wife and stepson. Their I-130 petition, which is the first step in helping a relative immigrate to the U.S., was approved. His wife needs to submit additional paperwork and schedule an interview. His work contract was scheduled to be completed in late 2017, and he then intended to complete the immigration process for his family.

Kyrgyzstan, a former Soviet Republic, is now a parliamentary republic. As of 2016, it has experienced human rights problems. Since the events in Ukraine in 2014, the U.S. Director of National Intelligence has assessed that Russia is increasing its presence in the region and accelerating a shift in which it is the uncontested influence there. In 2017, the U.S. State Department assessed Kyrgyzstan's capital as being a medium-threat location for terrorist activity directed at or affecting official U.S. Government interests, and a high-threat for political violence.

The Judge's Analysis

Kyrgyzstan has terrorism and human rights issues that raise concerns. Applicant's ties with his wife, stepson, and mother-in-law create a heightened risk of foreign influence and potential conflict of interest. While Applicant has applied for his wife and stepson to immigrate to the United States, they remain in Kyrgyzstan. There is limited information about his wife's prior work history and her potential ties in Kyrgyzstan. The Judge was not able to find that it is unlikely that Applicant would be placed in a position of having to choose between his foreign family members and the interests of the United States. The Judge found in favor of Applicant on the SOR allegation

pertaining to his son who is a U.S. citizen and against Applicant on the allegations pertaining to his wife, stepson, and mother-in-law.

Discussion

Applicant contends that the Judge did not consider all of the evidence. He argues, for example, that he has minimal contact with his family members in Kyrgyzstan, that he has applied for his wife and stepson to immigrate to the U.S., and that there is no evidence that his family knows any specifics about his job. The Judge, however, made findings about the amount of contact Applicant has with his family in Kyrgyzstan and about the status of the immigration petition for his wife and stepson. His arguments are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-01717 at 4 (App. Bd. Jul. 3, 2017). Applicant cites to a Hearing Office decision that is distinguishable from the case at hand because, among other reasons, it dealt with a different foreign country.¹ Additionally, Hearing Office decisions are not binding precedent on other Hearing Office judges or the Appeal Board. *Id.* Moreover, we find no basis for concluding the Judge erred in her whole-person analysis.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

¹ *See*, Directive, Encl. 2, App. A ¶ 6, which states in part, “Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizen to obtain classified or sensitive information or is associated with a risk of terrorism.”

Order

The Decision is **AFFIRMED**.

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board